

## REMARKS

In this office action the Examiner rejected claim 1 under 35 U.S.C 102(b) as being anticipated by GRITT et al (US 1,901,294) .

To support the rejection the Examiner stated, "Gritt discloses a lighting system (20-30, fig 1) for illuminating an interior of a fireplace (1-5, figs. 1-2), comprising: a rod (andiron 6) for or capable of securing said lighting system to an interior surface (backwall 2, fig. 2) of such fireplace (1-5); a bracket member (17, fig. 2)engageable (col. 2, line2) with the rod (6), a first means (socket 20, lamp 21) attached to the bracket member (17) for providing illumination; a second means inherently connected to the first means (20,21) for providing power to the first means (20,21) for illumination."

Applicant has amended claim 1 to further define that such rod for securing the lighting system is secured to the inner side wall surfaces of such fireplace.

There is no teaching in Gritt et al for securing the rod (which is really an andiron) to any surface. The rod of Gritt merely sits on the floor of the fireplace. The back portion of the andiron of Gritt may possibly touch the back wall as seen in Figure 2 but it does not touch any side wall nor is the rod (andiron) secured to any wall surface as is the rod of the present invention.

Therefore, Applicant respectfully requests that the Examiner withdraw the rejection of claim 1 under 35 U.S.C 102(b) as being anticipated by GRITT et al (US 1,901,294) .

The Examiner rejected claims 1, 6-10, and 12-14 under 35 U.S.C. 102(e) as being anticipated by DEUTSCH et al (US 6,431,730 B1). The Examiner stated, "DEUTSCH discloses a lighting system (10, fig. 1), comprising: a rod (24, figs 1 & 5); a bracket member (26,28) engageable with the rod (24, figs. 1,3, & 4), a first means (light strands 34,36,38,40, col.2, lines 60-64) attached to the bracket member (26,28) for providing illumination; a second means (power source/wall outlet 46) connected to the first means (34,36,38,40) for providing power to the first means (34,36,38,40) for illumination; wherein the first means (34,36,38,40) includes a plurality of incandescent lamps which may be different colored lamps (col. 1, lines 13-15, col. 2, lines 60-64); wherein the rod (24) is an expandable rod that is spring loaded(col. 3, lines 40-43); wherein the expandable rod has mechanical means (spring 62 within tubular sections 58,60) for providing expansion; wherein the expandable rod (24) further includes pads (64,66, fig. 5) on each end (48,50) of the expandable rod (24); wherein the pads (64,66) are an elastomeric composition being rubber (col. 3, line 49).

In regards to the recitations 'for illuminating an interior of a fireplace' and 'for securing said lighting system to an inner surface of such fireplace', any recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use then it meets the claim. The lighting rod support system of DEUTSCH is capable of illuminating an interior of an interior wall opening (col. 1, lines 34-35) such as a fireplace and the rod is capable of securing the lighting system to an inner wall surface (col. 1, lines 46-50) of such fireplace."

Applicant has amended claim 1 to include the limitation that such bracket is disposed on the rod intermediate the ends of the rod. Deutsch teaches, ".... top light support brackets 26, 28 are preferably attached to ends 48,50, respectively, of the traverse rod 24, and light strands 34,36,38,40 are preferably inserted into receiving positions on the light brackets during manufacture." (Col. 3, lines 12-15).

The brackets 26, 28 of Deutsch are disposed at the ends of the rod so as to drape the light strands and not as the present

invention where the bracket is intermediate the ends and substantially in the center portion of the rod.

Therefore, Applicant respectfully requests that the Examiner withdraw the rejection of claims 1, 6-10, and 12-14 under 35 U.S.C. 102(e) as being anticipated by DEUTSCH et al (US 6,431,730 B1).

The Examiner rejected claims 2-7 under 35 U.S.C. 103(a) as being unpatentable over GRITT et al (US 1,901,294) in view of Constantine (US 2,631,040). The Examiner stated, "Claims 2,3 and 5 commonly recite the second means being a standard 110 volt electrical circuit, not disclosed by GRITT. CONSTANTINE teaches a plug of the lighting system connected to a conventional alternate or direct current power mains (col. 2, lines 15-17) having a voltage of 115 volts (col.2, lines 55-56) for the purpose of providing adequate power to operate and illuminate the lighting system. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the lighting system of GRITT et al to include the type of standard electrical circuit or source as taught by CONSTANTINE in order to operate and illuminate the lighting system by easy connection to a standard power source or circuit of 115 voltage made standard and available in households.

Claims 4,6 and 7 recite a flasher arrangement, a plurality of incandescent lamps, and the lamps being different colored lamps, respectively, not disclosed by GRITT. CONSTANTINE teaches a plurality of different colored incandescent lamps (col. 1, line 51, col. 2, lines 1-2) connected to a flasher arrangement (14, col. 2, lines 2-22) for the purpose of providing an illuminated glow with continual varying intensity of illumination at Random intervals (col. 1) to simulate a fireplace flame. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fireplace illumination system of GRITT et al to include the plurality of colored lamps and flasher arrangement as taught by CONSTANTINE in order to make the simulated fire appear more real and spread out with plural glowing and flickering sources."

In view of the previous discussion with regard to claim 1 in which Applicant has shown that the present invention is not taught by Gritt et al, the teaching of Constantine with regard to the use of conventional 110 power or the use of colored lights does not alter the fact that the present invention is not taught by Gritt.

Therefore, Applicant respectfully requests that the Examiner withdraw the rejection of claims 2-7 under 35 U.S.C. 103(a) as

being unpatentable over GRITT et al (US 1,901,294) in view of Constantine (US 2,631,040).

Further in the office action the Examiner rejected claim 11 under 35 U.S.C. 103(a) as being unpatentable over DEUSTCH et al (US 6,431,730 B1) in view of MILLER (US 953,425). The Examiner stated, "Claim 11 recites the mechanical means including a collar and thumb screw arrangement to secure the rod for whatever expansion is desired, not disclosed by DEUTSCH. MILLER teaches a sleeve (5) and screw (1b) arrangement (figs. 2-3) for the purpose of selectively fixing the desired axial positioning after adjusting \of the length of elongate lamp support (1) between sidewalls (A,A, figs. 1-2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the axially adjustable light support rod of DEUSTCH et al to include the type of sleeve or collar and screw arrangement as taught by MILLER in order to fix the selected axial length of the rod between walls to which the rod is attached, especially if the bias in the springs do not have adequate strength to maintain the rod between the walls by itself"

Applicant has previously indicated the present invention as defined by amended claim 1 is not taught by Deustch and the teaching of Miller for the use of a mechanical means for

adjusting the length of a rod does not alter the fact that claim 1 is not taught by Deustch. Further, Applicant does not believe it would be obvious to one having ordinary skill in the art "to include the type of sleeve or collar and screw arrangement as taught by MILLER in order to fix the selected axial length of the rod between walls to which the rod is attached, especially if the bias in the springs do not have adequate strength to maintain the rod between the walls by itself" as stated by the Examiner since these rods are basically designed to be either spring biased or mechanical and not both.


Therefore, Applicant respectfully requests that the Examiner withdraw the rejection of claim 11 under 35 U.S.C. 103(a) as being unpatentable over DEUSTCH et al (US 6,431,730 B1) in view of MILLER (US 953,425).

In view of the amendment to the claims and the discussion supra it is believed that claims 1-18 are patentable. Therefore, Applicant believes that this application is now in condition for allowance and such allowance by the Examiner is respectfully requested.

In the event the Examiner has further difficulties with the examination and/or allowance of the application, the Examiner is invited to contact the undersigned agent for applicant by

telephone at (412) 380-0725, if necessary, to resolve any remaining questions or issues by interview and/or Examiner's Amendment as to any matter.

Respectfully submitted,  
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